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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,707	12/10/2003	Andrea Wooten	DMJ0302100	2081

7590

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EXAMINER

HALE, GLORIA M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/732,707

Applicant(s)

WOOTEN, ANDREA

Examiner

Gloria Hale

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 12-17, 22 and 23 is/are rejected.
- 7) ☒ Claim(s) 8-11 and 18-21 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

The use of the trademark VELCRO has been noted in this application. It should be capitalized wherever it appears and be accompanied by the **generic terminology hook and loop fastener**.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

The disclosure is objected to because of the following informalities: there is no description in the specification for reference number 35.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 and 18-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 6 there is no antecedent basis for "the external surface". In line 11, it is not clear as to whether "the upper back area" is of the wearer or the apparatus. In line 12 it does not appear that "each opposing side" of the back portion is attached to "each" side edge of the breast cup but is to the "outer side edge" of the breast cups. In line 13 "members" should read - -member - -. There is no antecedent basis for "the internal

peripheral edge". In regard to claim 2, lines 1-2 there is no antecedent basis for "the outer peripheral edge of each support member". In line 2 it appears that the word "of" is missing after "side". In claims 5 and 18, line 2 needs to end in a period (.). In claim 7, line 1 "contain further comprises" is unclear. In claim 11 it is not clear as to what "durable lightweight plastic encompasses" since there is no support in the specification for the claim language. In claim 7 it is not clear as to whether the "pressure points" are on the wearer or the brassiere or as to what they encompass.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,7,12-15,22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Witkower (US 2,421,448).

Witkower discloses a breast support apparatus including at least one layered front portion 6, two breast cups 7 with an inner layer abutting the breast (7 as seen in figure 2) with a mid-section (not #ed), lower section (not #d) and a side edge (at seams 15). Witkower includes a support member (40,41) secured to the external surface of each breast cup 7 and at least one layered back portion 10 with opposing sides (at 15) attached to each side edge of the breast cups (7). Witkower includes cooperating members (40a,40b) as claimed. (See Witkower, figures 1 and 2; col. 1, line 47- col. 2, line 42) Witkower further includes adjustable means (50,51 as seen in figure 1 and col.

2, lines 42-47). The brassiere of Witkower includes "pressure points" as broadly claimed in that the back would contact the back of the wearer at different locations causing pressure points. Witkower includes shoulder straps 33 and the drawstring mechanism with the first strap and second connecting mate portion as claimed (50,53,51,52).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Witkower in view of Chen (US 6,406,351).
Witkower discloses the invention substantially as claimed. However, Witkower does not specifically disclose the foam padding in the breast cup as claimed. Foam padding in breast cups of brassieres is well known as seen in Chen. Chen discloses the brassiere cup with foam 20 for comfort and support to the wearer and a smooth aesthetically pleasing appearance. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cup of Witkower to include foam in the breast cup for a smooth appearance and comfort to the wearer. (See Chen, col. 2, line 22).

Claims 8-11 and 18-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

None of the cited references, alone or in combination disclose the foam on the pressure point areas on the back portion or the mesh being of flexible wire or flexible plastic.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references disclose brassiere cups with adjustable breast support areas.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



GLORIA M. HALE
PRIMARY EXAMINER